

TERMS & CONDITIONS

This contract is subject to the attached terms and conditions:

General Service Terms

Cyberian Technologies INC (“CYBERIAN”) provides information technology-related services and support (collectively, “Services”) to clients (each a “Client”) subject to these terms and conditions (“Terms”). Such Services shall be provided in accordance with service quotes agreed to from time to time by CYBERIAN and Client (“Service Quotes”) which shall be governed by these Terms. In the event of a conflict between these Terms and any Service Quotes, the terms of the Service Quotes shall prevail.

Please read these Terms carefully before using the Services. By using the Services, you agree to be legally bound by these Terms and all terms, policies and guidelines incorporated by reference in these Terms.

Payment and Billing

Payment is due within thirty (30) days of receipt of an invoice. If a bill is not paid within thirty (30) days of its due date, Client shall be liable for late charges at the rate equal to the lesser of 1.5% per month, or the highest rate allowed by law, calculated from the due date until the amounts are paid, together with all expenses incurred in collection, including reasonable attorneys’ fees and expenses. If Client fails to make payment on any due date, CYBERIAN shall have the right to suspend any or all Services and, if such failure to make payment has not been cured within thirty (30) days of the due date, upon written notice terminate all Services. Termination of any Services by CYBERIAN shall not limit CYBERIAN from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Client of its obligation to pay all fees and expenses accruing prior to such termination.

Confidentiality

During the Term, each party may learn and have access to certain information of the other party which such other party designates as being “CONFIDENTIAL” or with words of similar import (the “Confidential Information”). Without limiting the foregoing, all CYBERIAN owned materials, deliverables, proposals, invoices, pricing information shall be deemed to be the Confidential Information of CYBERIAN without the need to be marked or designated as such. Except as expressly provided otherwise herein, neither party will, without the other party’s prior written approval, publish or otherwise disclose to any third party, with the exception of certain contractors of CYBERIAN working on matters relating to the Services, any Confidential Information of the other party. Each party shall use reasonable care to safeguard the Confidential Information of the other party and to prevent the unauthorized use or disclosure thereof. Notwithstanding any of the foregoing, Confidential Information shall not include information that: (i) is in the public domain at the time of its use or disclosure through no fault of the party receiving Confidential Information (the “Receiving Party”) or, in the case of CYBERIAN, its contractors; (ii) was lawfully in the possession of or demonstrably known by the Receiving Party prior to its receipt from the party disclosing Confidential Information (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s

Confidential Information; or (iv) becomes known by the Receiving Party from a third party and, to the Receiving Party's knowledge, is not subject to an obligation of confidentiality to the Disclosing Party. Client acknowledges that a breach of its confidentiality obligations under these Terms may, as determined by a court of competent jurisdiction, result in irreparable and continuing damage to CYBERIAN for which monetary damages will not be sufficient, and agrees, notwithstanding anything herein to the contrary, that CYBERIAN will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive and/or other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

Warranty

CYBERIAN warrants that all Services will be performed in a professional and workman-like manner in accordance with general industry standards. Client must report any deficiencies in Services to CYBERIAN in writing within ten (10) business days of performance of such Services in order to receive warranty remedies.

THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES. NO OTHER WARRANTIES APPLY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SERVICES ARE PROVIDED "AS IS" AND "WHERE IS" AND EACH PARTY DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. CYBERIAN DOES NOT WARRANT THAT THE SERVICES, SERVICE DELIVERABLES, OR ANY THIRD PARTY PRODUCTS ARE ERROR-FREE, OR WILL OPERATE IN AN UNINTERRUPTED MANNER OR IN COMBINATION WITH OTHER SOFTWARE PRODUCTS. THERE IS NO WARRANTY FOR THIRD PARTY SOFTWARE OR THIRD-PARTY HARDWARE PROVIDED BY CYBERIAN AND EACH SUCH THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE SHALL BE GOVERNED BY THE WARRANTIES OFFERED BY THE APPLICABLE THIRD PARTY UNDER THE TERMS OF THE AGREEMENT BETWEEN CLIENT AND SUCH THIRD PARTY. IN ADDITION, AND WITHOUT LIMITATION, CYBERIAN DOES NOT WARRANT OR REPRESENT THAT ANY THIRD PARTY SOFTWARE OR THIRD PARTY HARDWARE AS DELIVERED WILL MEET ALL OF CLIENT'S BUSINESS REQUIREMENTS WITHOUT THE NEED FOR CONFIGURATION OR ENHANCEMENTS OR ENCOMPASS ALL OF THE FUNCTIONALITY DESIRED BY CLIENT OR AVAILABLE IN CLIENT'S SOFTWARE PRODUCT.

Remedy

FOR ANY BREACH OF THE WARRANTY, CLIENT'S EXCLUSIVE REMEDY, AND CYBERIAN'S ENTIRE LIABILITY, SHALL BE LIMITED TO THE RE-PERFORMANCE OF THE SERVICES. IF CYBERIAN IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, CLIENT SHALL BE ENTITLED TO RECOVER THE FEES PAID TO CYBERIAN FOR THE DEFICIENT SERVICES.

Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RELATING TO LOST PROFITS, LOSS OF DATA OR LOSS OF BUSINESS OPPORTUNITY) EVEN IF THE PARTY CLAIMING SUCH DAMAGES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CYBERIAN'S AGGREGATE LIABILITY FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AGGREGATE AMOUNTS PAID TO CYBERIAN BY CLIENT FOR THE SPECIFIC SERVICES THAT ARE THE SUBJECT OF THE CLAIM OVER THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH CLAIM. CLIENT ACKNOWLEDGES THAT THE LIMITATION OF LIABILITIES AND DISCLAIMERS OF WARRANTIES CONTAINED HEREIN CONSTITUTE AN AGREED UPON ALLOCATION OF RISK BETWEEN THE PARTIES, HAVE BEEN FACTORED INTO PRICING OF THE SERVICES, AND ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES

Indemnification

Client agrees to indemnify, defend and hold harmless CYBERIAN and its subsidiaries and affiliated companies, third-party service providers and each of their respective officers, directors, employees, shareholders and agents (each an "Indemnified Party" and, collectively, "Indemnified Parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the Indemnified Parties arising out of or relating to (i) Client's use of the Services; (ii) any violation by Client of any of CYBERIAN's policies; and/or (iii) any acts or omissions by Client. For the purpose of Client's indemnification obligation hereunder, the term "Client" shall include any of Client's end users, visitors to Client's website, and users of Client's products or services, the use of which is facilitated by CYBERIAN.

Termination

Client may terminate this Agreement for any reason, at any time, by providing sixty (60) days written notice to CYBERIAN and by paying CYBERIAN an early termination fee equal to twenty five percent (25%) of the remaining Monthly Management Fees due under this Agreement. If a merger or acquisition occurs, and Client needs to terminate this Agreement, the same early termination fee will apply.

CYBERIAN may terminate this Agreement at any time for convenience by providing Client thirty (30) business days prior written notice. Either party may terminate this Agreement if the other party is in material breach of this Agreement and has not cured such breach within sixty (60) days of written notice specifying the breach. Consent to extend the cure period shall not be unreasonably withheld, so long as the breaching party has commenced cure during the sixty (60) day period and is pursuing such cure diligently and in good faith. Notwithstanding anything in this Agreement to the contrary, if Client fails to make payment on any due date, CYBERIAN shall have the right to suspend Services hereunder and, if such failure to make payment has not been cured within thirty (30) days of the due date, upon written notice terminate this Agreement. Termination of this Agreement shall not limit CYBERIAN from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Client of its obligation to pay all fees and expenses accruing prior to such termination. Furthermore, upon termination of this Agreement, Client shall provide CYBERIAN with access, during normal business hours, to Client's premises (or any other locations at which CYBERIAN-owned equipment is located) to enable CYBERIAN to remove all CYBERIAN-owned equipment from such premises (if any). In the event this Agreement is terminated for any reason whatsoever, all Client data held by CYBERIAN shall be returned to the Client in a commercially reasonable manner and time frame, not to exceed fifteen (15) calendar days following the date of request of the return of such data by Client. The data shall be returned in an industry-standard format that is mutually agreed upon by the parties. In the event that Client requests CYBERIAN's assistance to transition to a new service provider, CYBERIAN shall do so provided that (i) all fees due and owing to CYBERIAN under this Agreement are paid to CYBERIAN in full prior to CYBERIAN

providing its assistance to Client, and (ii) Client agrees to pay CYBERIAN its then-current hourly rate for such assistance, with upfront amounts to be paid to CYBERIAN as agreed upon between the parties. CYBERIAN shall have no obligation to store or maintain any Client data in CYBERIAN's possession or control beyond fifteen (15) calendar days following the termination of this Agreement.

Cooperation; Delays

Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Services and acknowledges that delays may otherwise result. Client agrees to provide, or provide access to, if reasonably necessary to perform the Services, the following: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from its employees and agents, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Services.

Client is also responsible for the following: (i) assigning a dedicated internal project manager to serve as a single point of contact for CYBERIAN; (ii) defining and maintaining its business objectives and requirements that will guide its use of any Services; (iii) reviewing customizations made to any Services for conformance with relevant requirements; (iv) training its users generally in the use of any Services; and (v) using any Service generally for its own internal business purpose.

Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

Scheduling of CYBERIAN's resources must be agreed to no later than five (5) business days prior to the date work is scheduled to begin. Subsequent scheduling changes requested by Client may result in additional fees. Delays caused by Client to which CYBERIAN has dedicated resources and begun work will be billed to Client as follows: (i) offsite planned resources will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per business day).

Changes to Scope

Any changes to the scope of work under a Solution Summary shall be made by written change order signed by an authorized representative of each party prior to implementation of such changes.

Relationship between the Parties

CYBERIAN is an independent contractor and nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Each party shall be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

No Solicitation

By engaging our services, Client agrees not to knowingly hire or contract separately with any person employed by CYBERIAN during the time CYBERIAN provided Client with professional services, and within one year of the last services provided for Client. In the event Client hires or contracts separately with such a person within one year of the last services provided for Client, CYBERIAN shall receive from Client, liquidated damages in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00). It is acknowledged and agreed by the Parties that, in such event, CYBERIAN's damages would be impossible to ascertain and that such amount constitutes a fair and reasonable amount of compensation therefor. Such liquidated damages are hereby fixed and are not intended to be nor shall they be treated as either a partial or full waiver or discharge of any right or remedy of CYBERIAN provided hereunder or by law.

Governing Law; Venue

The Services Agreement is governed by and construed according to the laws of the State of California without regard to conflict of laws provisions. Subject to Section 18 of these Standard Terms and Conditions regarding mandatory arbitration, each Party consents to jurisdiction in Marion County Superior Court, State of California. The Services Agreement is the entire and only agreement with regard to the matters it covers.

Dispute Resolution

The parties agree to make reasonable efforts to resolve any dispute arising between the parties prior to pursuing litigation. Such efforts shall include the escalation of the dispute to a senior manager of each party who has full authority to resolve the dispute on behalf of the party. In the event that Client brings a lawsuit for alleged breach of this Agreement, and Client does not prevail in the litigation, Client agrees that CYBERIAN shall be paid its reasonable attorneys' fees and costs for the defending the litigation.

Severability

In the event any provision of this Agreement is held to be invalid or unenforceable; the remaining provisions of this Agreement shall remain in full force and effect.

Assignment:

Neither party may assign this Services Agreement without written consent of the other. Notwithstanding the foregoing, CYBERIAN may assign this Services Agreement, without Client's consent, in connection with the sale of all or substantially all of its business or assets, provided that such purchaser agrees to perform the obligations of CYBERIAN hereunder. Subject to the foregoing, this Services Agreement will be binding upon and will inure to the benefit of the parties and their respective permitted successors and assigns. Any attempted assignment in violation of this provision will be null and void.

Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for nonpayment or breach of either party's intellectual property rights, no action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause of action has accrued.

Entire Agreement

This Agreement constitutes the complete agreement between the parties and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter thereof. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party. It is expressly agreed that any terms and conditions that may be attached to Client's purchase order, whenever received by CYBERIAN, shall be null and void and superseded in full by the terms of this Agreement.

Subcontractors

CYBERIAN may, in its reasonable discretion, use third party contractors inside or outside the United States to perform any of its obligations hereunder, including but not limited to migration of Client data, remote monitoring and management, network monitoring, helpdesk services, backup and hosted infrastructure services.

Survival

All terms and provisions of this Agreement which should by their nature survive the termination of this Agreement shall so survive.

No Presumption

The parties hereby acknowledge that this Agreement is the product of negotiation between the parties and that the identity of the party who prepared this Agreement shall in no way create a presumption that this Agreement and the language hereof is to be construed against such party.

Counterparts

This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall be deemed one and the same instrument.

Force Majeure

Neither party shall be liable in damages or have the right to terminate this agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, government restrictions (including the denial or cancellation of any export of other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, or communications failure).